

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

STEVE ERICKSON,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

) Case No. SUSP-00-0003

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held at the Department of Labor and Industries, 500 Pacific Avenue, Suite 400, Bremerton, Washington, on October 19, 2000.

1.2 **Appearances.** Appellant appeared *pro se*. Mitchel Sachs, Assistant Attorney General, represented Respondent Department of Veterans Affairs.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a seven-day suspension without pay. Respondent alleges that Appellant was inappropriate and unprofessional when he laughed at a coworker when she fell off a chair, made inappropriate comments about a subordinate and was actively involved in a no confidence vote against the superintendent.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); Aquino v. University of Washington, PAB No. D93-163 (1995); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084.

## II. FINDINGS OF FACT

2.1 Appellant Steve Erickson is a Social Services Manager and permanent employee for Respondent Department of Veterans Affairs at the Washington Veterans Home. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 12, 2000.

2.2 Appellant's responsibilities as a Social Services Manager primarily consisted of administering a social work program and developing and implementing social service policies and procedures. Appellant was also responsible for serving on an interdisciplinary team and he supervised three social workers.

2.3 By letter dated December 30, 1999, Lourdes E. Alvarado-Ramos, Superintendent, informed Appellant of his seven-day suspension without pay effective January 16, 2000 through January 22, 2000. Ms. Alvarado-Ramos alleged that on August 31, 1999, Appellant displayed inappropriate and unprofessional behavior in his communications with Stephanie Cordall, a resident guardian, made inappropriate comments about a subordinate and was actively involved in a vote of no confidence. Ms. Alvarado-Ramos specifically alleged:

When Ms. Cordall sat in a chair in your office, it broke, causing Ms. Cordall to fall back and hit her elbow on the wall. You reacted by laughing at Ms. Cordall.

...

1 After she recovered from the fall, Ms. Cordall states she commented to you that  
2 you must be pleased to have Diane Benjamin (a psychiatric social worker whom  
3 you directly supervise), returning to your department. Ms. Cordall reports you  
4 responded with misgivings about Ms. Benjamin's return. You spoke of Ms.  
5 Benjamin's "jumping ship" and questioned Ms. Benjamin's commitment to the  
6 program and whether or not she would stay. . . .

7  
8 You further informed Ms. Cordall that you were directly involved in an effort to  
9 voice a "no confidence" vote in the Director of the Department of Veterans  
10 Affairs and the Superintendent of the Washington Veterans Home.

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12 2.4 The allegations which resulted in Appellant's suspension were outlined in the letter written  
13 by Ms. Cordall on September 24, 1999.

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15 2.5 As a resident guardian, Ms. Cordall represented the wellbeing and needs of residents  
16 considered unable to make competent decisions regarding their needs in a variety of areas. Ms.  
17 Cordall worked directly with the social workers under Appellant's direct supervision. Trust,  
18 professionalism and credibility are fundamental to a good working relationship between the  
19 guardians and the social workers at the Department of Veterans Affairs.

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21 *Allegation #1*

22 2.6 Ms. Cordall was unable to testify before this Board due to a serious medical condition.  
23 However, on August 31, 1999, Ms. Cordall and Ms. Catherine Shaw (Clark), Activities Manager,  
24 were both present in Appellant's office when the events occurred. Ms. Shaw testified that after  
25 they entered Appellant's office, Ms. Cordall sat in a chair located close to a wall, the chair broke  
26 and caused Ms. Cordall to fall back and hit her elbow on the wall. Ms. Shaw testified that  
Appellant began to laugh and slap his leg. Ms. Shaw observed Ms. Cordall was clearly in pain and  
she asked Appellant to stop laughing. However, Appellant responded that he could not stop  
because "it's funny." After several minutes passed, Appellant asked Ms. Cordall if she needed  
medical attention, but Ms. Cordall indicated she did not.

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2 2.7 Appellant disputes that he continued laughing at Ms. Cordall once he discovered that she  
3 was in discomfort and states that he immediately offered Ms. Cordall help. However, Appellant  
4 does not dispute that he laughed at Ms. Cordall, and we find Ms. Shaw's versions of the events to  
5 be credible and find no motive on the part of Ms. Shaw to misrepresent Appellant's actions.  
6 Furthermore, Ms. Shaw's testimony supports Ms. Cordall's September 27, 1999 written statement  
7 which indicated that Appellant was unresponsive and continued to laugh at her.

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9 *Allegation #2*

10 2.8 Once Ms. Cordall regained her composure, she began to discuss the recent return of Diane  
11 Benjamin, a former employee, to work at the Veteran's home. Ms. Benjamin was a social worker  
12 under Appellant's supervision. Ms. Shaw testified that in response to Ms. Cordall's statement,  
13 Appellant commented he had concerns about Ms. Benjamin's return because Ms. Benjamin had  
14 previously "jumped ship" and he believed that she might not "stick around." Appellant does not  
15 dispute that he shared his misgivings about Ms. Benjamin's return with Ms. Cordall and Ms.  
16 Benjamin.

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18 *Allegation #3*

19 2.9 During the same conversation, there was a discussion of a "vote of no confidence" against  
20 the superintendent of the Washington Veteran's Home. Respondent specifically alleges in its  
21 disciplinary letter that Appellant was directly involved in an effort to "voice a 'no confidence'  
22 vote." Ms. Shaw testified that Appellant had commented to her on a previous date that "some  
23 people" were pursuing a vote of no confidence against the agency, that these rumors were being  
24 discussed within the agency, and that the person "leading the charge did not need their job."  
25 However, other than testimony that Appellant was aware of the rumor, Respondent presented no  
26 credible evidence to establish its allegation that Appellant was directly involved in the vote of no

1 confidence. Furthermore, the statement written by Ms. Cordall indicates that Appellant “went on to  
2 say that some of the staff was putting together a vote of ‘no confidence’ against administration and  
3 even some resident were involved,” not that he was directly involved in the effort.

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5 2.10 In addition to their professional working relationships, Appellant, Ms. Cordall, and Ms.  
6 Shaw engaged in social activities during their non-work hours.

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8 2.11 Appellant received the following prior corrective actions:

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10 By memo dated January 27, 1999, Ms. Alvarado-Ramos summarized a  
11 meeting she held with Appellant on January 7, 1999 related to a number of  
12 work-related issues. The memo addressed her concerns and expectations  
13 regarding Appellant’s role as a Social Services Manager and reminded  
14 Appellant that he was expected to model professional behavior and exercise  
15 discretion and independent judgment.

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17 By letter dated August 25, 1999, Ms. Alvarado-Ramos outlined her concerns  
18 regarding Appellant’s response to an email inquiry he received. Ms. Alvarado-  
19 Ramos informed Appellant that his response was inadequate and not  
20 responsive and she directed Appellant to response to inquiries in a  
21 professional manner.

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23 By letter dated October 28, 1999, Ms. Alvarado-Ramos reprimanded  
24 Appellant for inappropriate comments he made regarding management during  
25 a new employee orientation and for his failure to provide her with a copy of  
26 the video tape made during the orientation. Ms. Alvarado-Ramos warned  
Appellant that he could be subject to further corrective or disciplinary action  
if his inappropriate behavior continued.

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28 2.12 Ms. Alvarado-Ramos was the Superintendent of the Veterans home from March 1997  
29 through July 2000. Ms. Alvarado-Ramos testified that after she became superintendent, she began  
30 working with Appellant regarding her expectations in his role as a manager. Ms. Alvarado-Ramos  
31 testified that there were a number of issues related to Appellant’s demeanor which were

unprofessional, including his use of flip comments. She set forth her expectations to Appellant, that as a member of the management team and as an expert in his area, he needed to display a more professional demeanor when he communicated with staff and residents.

2.13 After reviewing the allegations and making a determination of misconduct, Ms. Alvarado-Ramos concluded that she could no longer trust or tolerate Appellant's inappropriate behavior and comments, especially when she considered his position as the facility's expert on the social wellbeing of the residents. Ms. Alvarado-Ramos determined a suspension was appropriate based on prior incidents concerning Appellant and her attempts to encourage Appellant to modify his behavior. Ms. Alvarado-Ramos' goal in imposing the suspension was to make an impact on Appellant that he needed to improve his behavior at work.

### **III. ARGUMENTS OF THE PARTIES**

3.1 Respondent argues that Appellant was in a position of authority and respect and that he neglected his duty to lead by example and act in a professional manner when he laughed at Ms. Cordall and when he called into question the commitment of Ms. Benjamin. Respondent argues that Appellant received prior warnings and letters of expectations regarding his conduct and that he was insubordinate when he failed to comply with his supervisor's directive that he behave in a professional manner. Respondent argues that as a manager, Appellant had a high level of responsibility and a duty to be loyal to management and to bring forth issues regarding a vote of confidence. Respondent asserts that Appellant has demonstrated a pattern of unacceptable behavior and poor judgement and that the totality of the circumstances warrant a seven-day suspension.

3.2 Appellant argues that the department has engaged in a continuing pattern of harassment and created a hostile work environment. Appellant asserts that on August 31, 1999, he voiced his

1 misgivings about Ms. Benjamin's return to the agency on an informal basis with Ms. Cordall and  
2 Ms. Clark, whom he considered to be his friends. Appellant asserts that Ms. Cordall knew Ms.  
3 Benjamin well and it was appropriate for him to speak to Ms. Cordall about issues and concerns  
4 regarding Ms. Benjamin's return to the agency. Appellant asserts that his statements regarding Ms.  
5 Benjamin have been taken out of context. Appellant asserts that he took Ms. Cordall's fall  
6 seriously and that he offered her assistance. Appellant argues that Respondent has failed to  
7 establish that he was involved in an effort to voice a vote of no confidence against Ms. Alvarado-  
8 Ramos or that he was passing a petition around to other employees and residents.

#### 10 IV. CONCLUSIONS OF LAW

11 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
12 herein.

14 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
15 the charges upon which the action was initiated by proving by a preponderance of the credible  
16 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
17 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
18 Corrections, PAB No. D82-084 (1983).

20 4.3 Although it is not appropriate to initiate discipline based on prior formal and informal  
21 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the  
22 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.  
23 D93-163 (1995).

25 4.4 Respondent has met its burden of proving by a preponderance of the credible evidence that  
26 Appellant neglected his duty to conduct himself in a professional and appropriate manner when he

1 laughed at Ms. Cordall and when he discussed his misgivings about Ms. Benjamin's return to the  
2 agency. It is clear that Appellant allowed his personal friendships with staff to interfere with his  
3 professional working relationships. Appellant is held to a higher level of responsibility and his  
4 comments about a subordinate undermined the trust placed in him as a manager and damaged his  
5 credibility as a supervisor. Furthermore, Ms. Alvarado-Ramos gave Appellant a clear directive to  
6 conduct himself in a professional manner. Appellant's friendship with coworkers does not mitigate  
7 his unprofessional workplace behavior or comments and his failure to modify his behavior  
8 constitutes insubordination.

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10 4.5 Although it appears that Appellant was aware that a vote of no confidence was being  
11 discussed among staff, Respondent has failed to establish that Appellant was directly involved in  
12 this movement. Respondent has failed to meet its burden of proof regarding this allegation.

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14 4.6 In determining whether a sanction imposed is appropriate, consideration must be given to  
15 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
16 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
17 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
18 program. An action does not necessarily fail if one cause is not sustained unless the entire action  
19 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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21 4.7 Under the totality and seriousness of the proven charges, a seven-day suspension is  
22 appropriate. Therefore, the appeal should be denied.



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**V. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Steve Erickson is denied.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

\_\_\_\_\_  
Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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Leana D. Lamb, Member